

**Final Order Denying Refund Number: 01-20200138  
Indiana Individual Income Tax  
For The Tax Year 2018**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

**HOLDING**

Indiana resident failed to substantiate that he was entitled to additional refund because, under the reciprocal agreement, his wages were Indiana income subject to Indiana income tax.

**ISSUE**

**I. Indiana Individual Income Tax - Reciprocity.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-3-3-3; [45 IAC 3.1-1-76](#); Income Tax Information Bulletin 28 (November 2016).

Taxpayer protests the Department's partial refund of individual income tax for 2018.

**STATEMENT OF FACTS**

Taxpayer is an individual who resides in Indiana. Each year, Taxpayer files Indiana Full-Year Resident Individual Income Tax returns (Form IT-40) reporting his Indiana income. During 2018, Taxpayer worked for a company in Wisconsin ("Wisconsin Employer"), which properly withheld tax on wages paid to Taxpayer. In addition to regular wages paid by his Wisconsin Employer, Taxpayer also received K-1 income from a Wisconsin partnership.

In 2019, Taxpayer filed his Indiana IT-40 return for 2018 year electronically. The Indiana Department of Revenue ("Department") adjusted Taxpayer's return and assessed Taxpayer additional tax, penalty, and interest. Taxpayer promptly paid. Subsequently, in January 2020, Taxpayer amended his 2018 Indiana income tax return, claiming that he was entitled to a refund of \$8,655. Upon review, the Department refunded \$6,186.76 to Taxpayer and denied the remainder.

Taxpayer protests the partial refund denial. A telephonic hearing was held, and this final determination ensues. Additional facts will be provided as needed.

**I. Indiana Individual Income Tax - Reciprocity.**

**DISCUSSION**

After cross-referencing the Department's records and examining Taxpayer's 2018 filing, the Department determined Taxpayer's W-2 income from his Wisconsin employer was subject to Indiana income tax pursuant to the reciprocal agreement executed by Indiana and Wisconsin. The Department thus made adjustments, which reduced Taxpayer's refund claimed on his amended Indiana income tax return.

Taxpayer disagreed. In his protest letter, Taxpayer stated, in relevant part, that:

I agree with a reduction of \$569 . . . After taking into consideration the \$569, a balance of \$1,918 exists. No other explanation has been provided why the refund was reduced. Therefore, I disagree with the result and request additional \$1,918 be refunded.

The issue thus is whether Taxpayer demonstrated that he correctly filed his 2018 amended Indiana IT-40 return and that the Department erroneously denied the refund.

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). To efficiently and effectively compute what is considered the resident-taxpayer's Indiana income tax, the Indiana statute refers to

the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be his or her Indiana income tax after applying certain additions and subtractions to that starting point, with modifications thereafter.

In addition, Indiana has entered into reciprocal agreements with several states. Under the agreed reciprocity, any Indiana resident-taxpayer who earns "income consisting of salaries, wages, and commissions from states [such as, Wisconsin,] with which Indiana has a reciprocal tax agreement must report all such income as if it were from Indiana." [45 IAC 3.1-1-76](#). Reciprocity, however, does not automatically apply and transfer the withholding tax credits between reciprocal states. Specifically, the same regulation provides, "Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes." *Id.*

Indiana law also permits Indiana resident-taxpayer to claim an income tax credit - not exceeding their Indiana income tax due - for the taxes he or she is required to pay to other states. IC § 6-3-3-3(a).

The Department's Income Tax Information Bulletin 28 (November 2016), 20161228 Ind. Reg. 045160560NRA, further explains the following:

### III. RECIPROCAL AGREEMENT STATES

Five states have a reciprocal agreement with the state of Indiana. They are Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin. **All salaries, wages, tips, and commissions earned in these states by an Indiana resident must be reported as if they were earned in Indiana.** A credit cannot be taken for any taxes withheld by or paid to any of these states in connection with income from salaries, wages, tips, and commissions. If taxes have been withheld or paid to any of these states, a claim for refund should be filed with that state by filing that particular state's income tax form for nonresidents. Residents of Kentucky, Michigan, Ohio, Pennsylvania, and Wisconsin who have Indiana income will report and pay tax on that income to their state of residence. If a resident of one of the above states has wages, salaries, tips, or commissions from Indiana sources, and the individual's only income from Indiana sources is wages, salaries, tips, or commissions, Form IT-40RNR must be filed. A credit for Indiana state and county tax withholding amounts will be allowed, and any Indiana county tax liability will be figured. If a resident of one of the above states has income from Indiana other than wages, salaries, tips, or commissions, Form IT-40PNR must be filed. (**Emphasis added**).

The Indiana resident-taxpayer may also claim a tax credit for income tax paid to Wisconsin. Unlike the withholding tax credits on Schedule 5, this tax credit for income tax paid to Wisconsin (claimed on the Schedule 6) is not a refundable credit. The resident-taxpayer receives no refund of the overpayment from Indiana on that income even when he or she has paid more tax to Wisconsin.

In this instance, Taxpayer does not dispute that he has been an Indiana resident. As such, for 2018, although Taxpayer worked for his Wisconsin Employer, his W-2 income was subject to Indiana income tax under the executed reciprocal agreement. Therefore, Taxpayer was required to file his IT-40 return, reporting his income - including W-2 income from Wisconsin - and remitting tax to Indiana. The Department properly adjusted Taxpayer's amended return because his amended return incorrectly claimed his W-2 income as Wisconsin income.

In short, given the totality of the circumstances, Taxpayer's supporting documentation failed to demonstrate that he was entitled to additional refund. The Department correctly adjusted Taxpayer's returns to comport with the records.

### FINDING

Taxpayer's protest is respectfully denied.

November 17, 2020

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